

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BILLY RAY CHAPMAN,)
)
Petitioner,)
)
v.) Case No. CIV-17-647-C
)
JOE M. ALLBAUGH,)
)
Respondent.)

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2241. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin, who entered a Report and Recommendation (“R&R”) on September 22, 2017, recommending the Petition be dismissed. Rather than object, Petitioner filed a Motion to Dismiss Respondent’s Response (Dkt. No. 15) and a Motion for Summary Judgment (Dkt. No. 16).

The substantive facts and law are accurately set out in Judge Erwin’s R&R and there is no purpose to be served in repeating them yet again. As Judge Erwin noted, Petitioner’s § 2241 action is untimely. Petitioner’s Motion to Dismiss and Motion for Summary Judgment fail to make objections to the R&R based on the facts or law contained therein. The Motions primarily rely on inaccurate facts, complaining Respondent failed to respond to the Petition. However, Respondent properly responded by filing a timely Motion to Dismiss (Dkt. No. 11), which is addressed in the R&R. Because Petitioner does not address the legal or factual underpinnings of Judge Erwin’s R&R, habeas relief is not warranted.

As set forth more fully herein, the Court adopts, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 13). This matter is DISMISSED without prejudice, Petitioner's Motion for Appointment of Counsel (Dkt. No. 6) is DENIED, Respondent's Motion to Withdraw (Dkt. No. 14) is GRANTED, and all other pending motions are stricken as MOOT. A separate judgment will issue.

IT IS SO ORDERED this 19th day of October, 2017.



ROBIN J. CAUTHRON
United States District Judge